



## **Agricultural Marketing Service**

### **7 CFR Part 925**

**[Doc. No.: AMS-SC-21-0049; SC21-925-2]**

#### **Amendments to the Marketing Order of Grapes Grown in Southeastern California**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends Marketing Order No. 925, which regulates the handling of grapes grown in a designated area of southeastern California. The amendments change the California Desert Grape Administrative Committee's (Committee) size, and its quorum and voting requirements.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Pushpa Kathir, Marketing Specialist, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, [Pushpa.Kathir@usda.gov](mailto:Pushpa.Kathir@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as the "Order") is effective under the

Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of grape producers and handlers operating within the area of production, and a public member.

Section 8c(17) of the Act (7 U.S.C 608c (17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. The Agriculture Marketing Service (AMS) has determined this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to

preclude, preempt, or supersede any State program covering grapes grown in a designated area of southeastern California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered the nature and complexity of the amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the Order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The Committee unanimously recommended the amendments following deliberations at the public meeting held on April 13, 2021. This final rule will amend the Order by changing the Committee's size, as well as its quorum and voting requirements.

AMS published the initial proposed rule in the Federal Register on August 13, 2021 (86 FR 44644) to solicit comments on the proposals. After reviewing the comments, AMS republished the proposed rule without change along with the referendum order in the Federal Register on January 25, 2022 (87 FR 3699). That document directed that a referendum among grape producers in southeastern California be conducted February 14, 2022, through March 4, 2022, to determine whether they favored the proposals. To become effective, the amendments had to be approved by either two-thirds of the producers voting in the referendum or by those representing at least two-thirds of the volume of table grapes produced by those voting in the referendum.

The results of the referendum show that 100 percent of the eligible producers who voted and 100 percent of the volume voted favored both amendments. Thus, both amendments were passed and will change the Committee's size, and quorum and voting requirements.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing Orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of no more than \$1,000,000. Small agricultural service firms (handlers) are defined as those with annual receipts of no more than \$30,000,000.

The Committee reports that there are 18 producers and 10 handlers of table grapes in the marketing order production region. The Committee packout reports show that average annual packout for 2018 through 2020 was 3.2127 million 18-pound containers, equivalent to 28,914 tons. The 3-year average of California fresh table grape prices was \$1,267 per ton. Multiplying quantity times price yields an annual average crop value estimate of \$36.634 million. Dividing the average crop value estimate by the number of producers (18) yields an average crop value per producer of \$2.035 million, well below the SBA small farm size threshold of \$3,500,000. Therefore, using the estimated prices, packout volume, and number of producers, and assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as small businesses under the SBA definition.

Dividing the average crop value of \$36.634 million by the number of handlers (10) yields a per-handler estimate of \$3.663 million, well below the SBA small business threshold of \$30,000,000 in annual receipts. However, that computation measures handler annual receipts using producer-level crop value data, since AMS is unable to locate an estimate of a handler margin. A range of handler margin estimates would be 30 to 40 percent above the grower price. Applying those two percentages, a range of handler annual receipts estimates would be \$4.8 to \$5.1 million, still well below \$30,000,000. Therefore, using these estimated prices, utilization volume, handler margin estimates and number of handlers, and assuming a normal bell-curve distribution of receipts among handlers, AMS estimates that the majority of handlers would meet the SBA definition of small businesses.

AMS has determined that the amendments, as effectuated by this final rule, will not have a significant impact on a substantial number of small businesses. Rather, large and small entities alike are expected to benefit from the Committee's improved ability to address important issues of interest to all on a timely basis. The reduced number of seats on the Committee, and the reduced quorum and voting requirements, will not require any significant changes in producer or handler business operations, and no significant industry educational effort will be needed. Producers and handlers, large and small alike, will incur no additional costs. No small businesses will be unduly or disproportionately burdened.

The amendments to the California desert grape marketing order reduces the number of member and alternate seats on the California Desert Grape Administrative Committee from 12 to 10 and reduces the quorum and voting requirements from 8 to 6 members. The amendments are necessary to reflect the industry's consolidation. Since the promulgation of the marketing order in 1980, the California desert grape industry has lost roughly 55 percent of its producers and 58 percent of the registered handlers. No economic impact is expected from these amendments because they will not establish any new regulatory requirements on handlers, nor will they have any assessment or funding implications. There will be no change in financial costs, reporting, or recordkeeping requirements as a result of this action.

Alternatives to this action, including making no changes at this time, were considered by the Committee. Due to changes in the industry, AMS believes the action is justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee will enable it to satisfy membership and quorum requirements fully, thereby ensuring a more efficient and orderly flow of business.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This action will impose no additional reporting or recordkeeping requirements on either small or large grape handlers in southeastern California. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings are widely publicized throughout the southeastern California table grape production area. All interested persons are invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the April 13, 2021, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposals.

A proposed rule concerning this action was published in the Federal Register on August 13, 2021 (86 FR 44644). Copies of the rule were mailed to all table grapes handlers in southeastern California. The proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 12, 2021, was provided to allow interested persons to respond to the proposal. Two comments were received during the comment period, both of which were in support of the proposed amendments. However, one commentor was concerned that

the restructuring of the Committee might limit the participation of interested parties in the industry. Further, the commentor suggested adding a requirement for periodic review of the Committee structure to the regulations.

A proposed rule and referendum order were then published on January 25, 2022 (87 FR 3699). That document directed that a referendum among table grape producers in southeastern California be conducted during the period of February 14, 2022, through March 4, 2022, to determine whether they favored the proposed amendments to the Order. To become effective, the amendments had to be approved by at least two-thirds of the growers voting, or two-thirds of the volume of table grapes represented by voters in the referendum. The results show that 100 percent of the eligible producers who voted and 100 percent of the volume voted favored both amendments.

The producer vote met the requirement of being favored by two-thirds of the producers voting, or by two-thirds of the volume voted in the referendum for both amendments. Both amendments were passed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

## **Order Amending the Order Regulating the Handling of table grapes Grown in Southeastern California**

### **Findings and Determinations**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 925; and all said previous findings and determinations are hereby

ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 925, as amended, and as hereby further amended and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. Marketing Order 925, as amended, and as hereby further amended, regulates the handling of grapes grown in southeastern California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 925, as amended, as hereby further amended, is limited in application to the smallest regional production area, which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 925, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of grapes produced or packed in the production area; and

5. All handling of grapes produced or packed in the production area, as defined in Marketing Order 925, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

It is hereby determined that:

1. The issuance of this amendatory Order, amending the aforesaid Order, is favored, or approved by producers representing at least two-thirds of the volume of table grapes produced by those voting in a referendum on the question of approval and who, during the period of January 1, 2021, through December 31, 2021, have been engaged within the production area in the production of such table grapes.

2. The issuance of this amendatory Order advances the interests of growers of table grapes in the production area pursuant to the declared policy of the Act.

### **Order Relative to Handling**

It is therefore ordered, that on and after the effective date hereof, all handling of grapes grown in Southeastern California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions amending the Order contained in the proposed rule and referendum order, published in the Federal Register (87 FR 3699) on January 25, 2022, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

### **List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service is amending 7 CFR part 925 as follows:

### **PART 925 – GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA.**

1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. In § 925.20, revise paragraph (a) to read as follows:

#### **§ 925.20 Establishment and membership.**

(a) There is hereby established a California Desert Grape Committee consisting of 10 members, each of whom shall have an alternate who shall have the same qualifications as the member. Four of the members and their alternates shall be producers, or officers or employees of producers (producer members). Four of the members and their alternates shall be handlers, or officers or employees of handlers (handler members). One member

and alternate shall be either a producer or handler, or an officer or employee thereof. One member and alternate shall represent the public.

\* \* \* \* \*

3. In § 925.30, revise paragraph (a) to read as follows:

**§ 925.30 Procedure.**

(a) Six members of the committee shall constitute a quorum, including at a minimum one producer member and one handler member, and any action of the committee shall require at least six concurring votes;

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**Erin Morris,**

*Associate Administrator,*

*Agricultural Marketing Service.*

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